

COPY

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of
New Day Broadband, LLC
Enforcement Complaint Concerning
KIRO-TV, Seattle, Washington

MB Docket 12-15
CSR 8597-C

FILED/ACCEPTED

MAR 12 2012

Federal Communications Commission
Office of the Secretary

To: The Secretary's Office
Attn: The Media Bureau

ENFORCEMENT COMPLAINT

KIRO-TV, Inc. ("Cox"), licensee of full-power television station KIRO-TV, Seattle, Washington, by its attorneys, hereby files this Enforcement Complaint against New Day Broadband, LLC. ("New Day"). For many months, and possibly since August 1, 2010, New Day has retransmitted without Cox's consent the signal for KIRO-TV on several cable systems serving various communities (the "Communities") in the Seattle-Tacoma Designated Market Area ("DMA") and the Spokane DMA in violation of Section 325(b)(1)(A) of the Communications Act of 1934, as amended (the "Communications Act"), 47 U.S.C. § 325(b)(1)(A), and Section 76.64(a) of the Commission's rules, 47 C.F.R. § 76.64(a).¹ Cox cannot say with certainty how long New Day has retransmitted KIRO-TV without consent because New Day has failed to make any retransmission fee payments to Cox and has not responded to any of Cox's inquiries since August 2011. Regardless, Cox seeks an Order compelling New Day to comply with the law and imposing such sanctions on New Day as the

¹ In particular, the Communities are as follows (all Washington State): Anderson Island, Brewster, Bridgeport (including unincorporated areas adjacent to Bridgeport), Darrington, Forks (including unincorporated areas adjacent to Forks), Land Creek Area, Pateros, Snohomish, Twisp, Waterville, and Winthrop. The cable systems serving these Communities are hereinafter referred to as the "Systems."

Bureau deems appropriate for the operator's knowing, deliberate, and continuing violations of the law.

BACKGROUND

Effective January 1, 2009, Cox entered into a retransmission consent agreement (the "Broadstripe Agreement") with Broadstripe, LLC ("Broadstripe") granting Broadstripe the right to retransmit KIRO-TV's signal on Broadstripe's cable systems throughout Washington State. Broadstripe regularly paid its retransmission fee and fully complied with the terms of the Broadstripe Agreement. On August 1, 2010, however, Broadstripe sold the Systems to New Day. The next month, Cox stopped receiving regular retransmission consent payments for the Systems.²

In August 2011, KIRO-TV's Director of Programming and Research, Ms. Therese Weiler spoke with New Day's Chief Executive Officer, Mr. Neal Schnog. Ms. Weiler explained to Mr. Schnog that, if New Day did not assume the Broadstripe agreement, New Day must enter into a new retransmission agreement with Cox. On August 10, 2011, Ms. Weiler followed up her conversation by sending Mr. Schnog an email, which included a draft retransmission agreement retroactive to August 1, 2010.³ Mr. Schnog responded via telephone that he would review the material and be in touch.

For the next several months, Cox attempted to reach New Day to determine whether New Day assumed the Broadstripe Agreement or, if not, discuss the terms of a new retransmission consent agreement. The Broadstripe Agreement was due to expire on December 31, 2011. Thus, to the extent that New Day assumed the Broadstripe Agreement, it was necessary for the parties to negotiate an extension of that agreement. Accordingly, on November 10, 2011, Ms.

² For support for all factual matters in this Enforcement Complaint, *see* the Declaration of Ms. Therese Weiler attached as Exhibit A. Broadstripe sold only a portion of its cable systems to New Day. It retained ownership of the remaining cable systems, and Broadstripe continued to pay a retransmission fee for those cable systems that it did not sell to New Day. This Complaint relates only to the particular Systems that New Day acquired from Broadstripe.

³ *See* Exhibit B.

Weiler sent Mr. Schnog another email providing another draft retransmission agreement, and Ms. Weiler explained that, if New Day paid all outstanding retransmission consent fees due under the Broadstripe Agreement since August 2010, Cox would waive all late penalties and interest on those payments.⁴ New Day has not responded to that message. Accordingly, on December 1, 2011, Cox's counsel informed New Day in writing that (1) if New Day did not assume the Broadstripe Agreement, New Day was retransmitting KIRO-TV without Cox's consent, (2) if New Day assumed the Broadstripe Agreement, New Day was in material breach for failing to make any retransmission fee payments since New Day purchased the Systems, and (3) in either case, Cox was exercising its right to terminate the Broadstripe Agreement.⁵ New Day has not responded to that letter. As a result, Cox terminated the Broadstripe Agreement with respect to the Systems effective December 30, 2011. In any event, even without the early termination of the Broadstripe Agreement, the agreement with respect to the Systems would have expired on its own terms on December 31, 2011.

ARGUMENT

Under the Communications Act and the Commission's rules, cable systems may not retransmit the signal of a television broadcast station without the consent of the broadcaster. Section 325(b) of the Communications Act provides that cable systems and multichannel video programming distributors must obtain the "express authority of the originating station" to retransmit the signal of a broadcasting station.⁶ Section 76.64 of the Commission's rules adds the requirements that the originating station's express consent must be in writing and must "specify the extent of the consent being granted."⁷ The Commission has stated that "properly

⁴ See Exhibit C.

⁵ See Exhibit D.

⁶ 47 U.S.C. § 325(b)(1)(A) (emphasis added). Exceptions to this rule, including those for local commercial stations that elect to assert their must-carry rights, are not applicable here. See 47 U.S.C. §§ 325(b)(1)(B), 534(b).

⁷ 47 C.F.R. §§ 76.64(a), 76.64(i), 76.64(j).

documented retransmission of a television signal without consent would be grounds for imposition of a forfeiture.”⁸

The Communications Act requires New Day to obtain Cox’s consent to retransmit KIRO-TV. New Day’s System serving the Communities is indisputably a multichannel video programming distributor within the meaning of Section 602 of the Communications Act.⁹ Based upon information and belief, it is a facility that is equipped to provide multiple channels of video programming and cable service to multiple subscribers within a community.¹⁰ Likewise, KIRO-TV is indisputably a broadcasting station within the meaning of Section 3 of the Communications Act because it is a television station equipped to broadcast a television signal to the public.¹¹ Nielsen Media Research, Inc. has assigned KIRO-TV to the Seattle-Tacoma DMA.¹² The majority of the Communities are within the Seattle-Tacoma DMA; a handful are within the Spokane DMA. For the New Day Systems within the Seattle-Tacoma DMA, Cox properly elected retransmission consent for KIRO-TV for both the 2012-2014 and 2009-2011 carriage cycles.¹³ For the Communities within the Spokane DMA, KIRO-TV automatically defaults to retransmission consent status.¹⁴ Therefore, for all of the Communities, New Day must obtain Cox’s express, written consent to retransmit KIRO-TV’s signal on its Systems.

⁸ In the Matter of Implementation of the Cable Television and Consumer Protection and Competition Act of 1992, 8 FCC Rcd 2965, 3005 at para. 175 (1993).

⁹ See 47 U.S.C. §§ 522(7), 522(13).

¹⁰ See List of Registered Washington Cable Communities, *available at* <http://www.fcc.gov/mb/engineering/list/WA.xls> (last visited February 13, 2012) (showing New Day Broadband systems registered as WA0087 in Darrington, Washington; WA0093 in Forks, Washington; WA0153 in Waterville, Washington; WA0186 in unincorporated Lake Creek Area, Washington; WA0200 in unincorporated area of Forks, Washington; WA0351 in Brewster, Washington; WA0352 in Pateros, Washington; WA0353 in Bridgeport, Washington; WA0354 in unincorporated area of Bridgeport, Washington; WA0421 in Twisp, WA; WA0422 in Winthrop, Washington; WA0434 in unincorporated area of Snohomish, Washington; and WA0496 in unincorporated area of Anderson Island, WA).

¹¹ See 47 U.S.C. §§ 153(5), 153(6); See FCC File Number BLCDT-20091218ACR.

¹² See BIA/Kelsey, *Investing in Television: Market Report 2011* at 13 (identifying DMA assignments applicable to the current carriage cycle).

¹³ See Exhibit A.

¹⁴ See 76.64(a).

New Day does not have Cox's consent to retransmit KIRO-TV on its Systems, yet New Day apparently continues to retransmit KIRO-TV's signal on its Systems.¹⁵ The only question is how long it has retransmitted KIRO-TV's signal without Cox's consent. If New Day assumed the Broadstripe Agreement when it acquired the Systems in August 2010, New Day failed to make any payments under that Agreement. As a result of that material breach, Cox terminated the Broadstripe Agreement with respect to the Systems effective December 30, 2011 – one day before it was due to expire. If New Day did not assume the Broadstripe Agreement, New Day has not had Cox's consent to carry the Station since it acquired the Systems on August 1, 2010. In either case, New Day's continued retransmission without consent violates the Communications Act and the Commission's rules. In a final attempt to resolve this matter before filing this Complaint, on February 8, 2012, Cox sent another written notice to Mr. Schnog to inform him that New Day's continued retransmission of KIRO-TV's signal violates federal law.¹⁶ New Day has not responded to that letter or any of Cox's other inquiries since August 2011 leaving Cox little choice but to enforce its rights before the Commission.

¹⁵ See TV Listings Guide for Broadstripe - Cable, at <http://tvlistings.zap2it.com/tvlistings/ZCGrid.do?method=decideFwdForLineup&zipcode=98134&setMyPreference=false&lineupId=WA4662> 6:- (last visited February 13, 2012).


¹⁶ See Exhibit C.

CONCLUSION

Since either August 1, 2010 or December 30, 2011, New Day has retransmitted KIRO-TV's signal on its cable systems without Cox's express, written consent. New Day therefore knowingly and willfully violated the Communications Act and the Commission's rules. Cox requests that the Bureau promptly issue an order directing New Day to come into compliance with its obligations with respect KIRO-TV's signal on all of the Systems and imposing such sanctions on New Day as the Bureau deems appropriate.

Respectfully submitted,

KIRO-TV, Inc.



Michael D. Basile
Robert J. Folliard, III

DOW LOHNES PLLC
1200 New Hampshire Ave., NW
Suite 800
Washington, DC 20036
202-776-2000

Its Attorneys

March 12, 2012

EXHIBIT A

Declaration of Therese Weiler

**Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

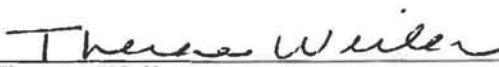
In the Matter of

New Day Broadband, LLC

Enforcement Complaint Concerning KIRO-
TV, Seattle, Washington

DECLARATION OF THERESE WEILER

1. My name is Therese Weiler, and I serve as Director of Programming and Research for KIRO-TV.
2. I have read the foregoing Enforcement Complaint (the "Complaint"), and I am familiar with the contents thereof.
3. In August 2011, I spoke to Mr. Neal Schnog at New Day Broadband, LLC ("New Day") and discussed entering into a retransmission agreement for KIRO-TV that would be retroactive to August 1, 2010. On August 10, 2011, I sent a draft agreement to Mr. Schnog. A true and correct copy of that letter is attached as Exhibit B. Mr. Schnog called me to say that he received the email and would be in touch. To the best of my memory, I never received any further response from Mr. Schnog or anyone else at New Day.
4. On November 10, 2011, I sent another email to Mr. Schnog with a draft retransmission agreement. A true and correct copy of that letter is attached as Exhibit C. I never received a response to that email.
5. On February 8, 2012, I emailed a letter to New Day advising it that continued retransmission of KIRO-TV without express consent violated federal law. A true and correct copy of that letter is attached as Exhibit F.
6. I declare under penalty of perjury that the facts contained herein and within the foregoing Complaint are true and correct to the best of my knowledge, information, and belief formed after reasonable inquiry, that the Complaint is well grounded in fact, that it is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose.


Therese Weiler
2807 Third Avenue
Seattle, Washington 98121

Dated: February 29 2012

EXHIBIT B

August 10, 2011 Email to New Day

Folliard, Robert

Subject: FW: New Day Broadband

Attachments: 2011 KIRO Form Retransmission Agreement New Day (in-DMA Only)-c.doc; 2011 FORM_ Out of Market Retransmission Rider-c.doc

From: Weiler, Therese (CMG-Seattle)

Sent: Wednesday, August 10, 2011 10:01 AM

To: 'ceo@newdaybroadband.com'

Subject: KIRO - Seattle Retransmission Consent Agreement

Dear Neal

Per our discussion, I'm attaching KIRO's standard retransmission consent agreement. Please fill in the number of subscribers and also provide the names of all systems in the Seattle DMA which carry KIRO. If New Day has any systems carrying KIRO-TV that are not in the Seattle DMA, I have included our standard out-of-market retransmission rider to account for these systems. Please list all of these out-of-DMA systems in the rider. Please sign both documents and return them to KIRO along with your payment for the months in which you've carried KIRO on these systems. My understanding from Broadstripe is that you purchased the systems on August 1, 2010, so we need payment for 12 months, from August 1st 2010 through July 31st, 2011.

Regards

Therese Weiler
Program Director
KIRO-TV
206-728-8779

Attachments Redacted -- Will be Provided Upon Request

EXHIBIT C

November 10, 2011 Email to New Day

Folliard, Robert

Subject: FW: KIRO Retransmission Agreement

From: Weiler, Therese (CMG-Seattle)
Sent: Thursday, November 10, 2011 11:09 AM
To: 'ceo@newdaybroadband.com'
Subject: KIRO Retransmission Agreement

Dear Neal

I am disappointed that I have not heard back from you since we spoke in August. As you know, your cable system has been carrying KIRO-TV illegally, without our consent since at least August 1, 2010, when New Day acquired its systems from Broadstripe.

We are willing to work with you to fix this problem by entering into an agreement backdated to 2010. We also are willing to waive the interest charges and late penalties for failing to pay retransmission fees for the last fifteen months.

Because I have not heard from you, however, I will reiterate our offer one last time. If you do not accept it by next Friday, November 18, this offer will expire.

1. KIRO-TV will enter into a new long-term retransmission agreement retroactive to August 1, 2010 and expiring December 31, 2014. A copy of our standard agreement (made retroactive to August 2010) is attached.
2. New Day must pay all past due retransmission fees at the rates in the attached agreement upon executing this agreement.
3. KIRO-TV will waive all late penalties and interest.

If I do not hear from you by November 18, 2011, we will have no choice but to file a complaint with the FCC regarding New Day's illegal carriage of our programming. In addition, we will inform our program suppliers, including CBS, the NFL, and the NCAA, that New Day is carrying our signal illegally. As such, New Day is ineligible for the statutory copyright license and potentially subject to millions of dollars in copyright liability.

Please contact me as soon as possible.

Therese Weiler
206-728-8779
tweiler@kiroTV.com

Attachments redacted -- Will be provided upon request.

EXHIBIT D

December 1, 2011 Letter to New Day

December 1, 2011

VIA FACSIMILE (702-543-2832)

Neal Schnog
New Day Broadband
3457 Lupine Bush Court
Las Vegas, NV 89135

Re: Notice of Material Breach and Termination
Retransmission Consent Agreement

Dear Mr. Schnog:

As you know, KIRO-TV, Inc. ("Broadcaster") is the owner and operator of Television Station KIRO-TV, Channel 7, CBS, Seattle, Washington (the "Station"). On January 1, 2009, Broadcaster entered into a Retransmission Consent Agreement (the "Agreement") with Broadstripe, LLC ("Broadstripe") granting it consent to retransmit the Station's programming on cable systems serving Anderson Island, Bridgeport, Creston, Darrington, Forks, Mansfield, Marblemount, Pe Ell, Twisp, and Waterville, Washington (the "Systems"). It is our understanding that on August 1, 2010, New Day Broadband, LLC ("New Day") acquired the Systems from Broadstripe.

New Day currently retransmit the Station on the Systems, yet Broadcaster never granted consent directly to New Day for such retransmission. Therefore, Broadcaster has been operating under the assumption that New Day assumed Broadstripe's rights and obligations under Agreement. If, however, New Day did not assume the Agreement, New Day has been retransmitting the Station without consent since August 1, 2010.

As you know, carriage of the Station without its consent is a serious matter. It would violate communications laws and void Operator's ability to invoke the cable copyright license for any programming included in the Broadcast Signal. See, e.g., 17 USC § 111 and 47 USC § 325(b). As a result, New Day would be subject to substantial liability for copyright infringement, and Broadcaster would have no choice but to notify its program suppliers (including the CBS Network, the NFL, the NCAA, and dozens of program syndicators) that New Day has been infringing on their content for more than a year. Therefore, Broadcaster believes that New Day would have chosen to assume the Agreement rather than willfully violate federal law.

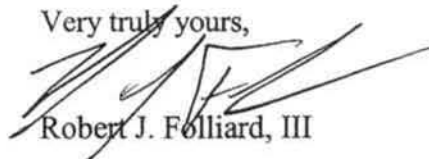
In any event, to the extent that New Day has assumed the Agreement, Broadcaster provides written notice of New Day's material breach of critical provisions in the Agreement as well as Broadcaster's exercise of its right to terminate the Agreement. Section 6 of the Agreement obligates Operator to pay Broadcaster a fee of \$0.29 per Subscriber per month between August 1, 2010 and December 31, 2010 and a fee of \$0.31 per Subscriber per month for the 2011 calendar year. In addition, those payments must include a statement accurately identifying the average number of Subscribers as of the beginning of each month. Despite these express requirements, we have not received the Rights Fees or Subscriber reports for the month beginning August 1, 2010 through October 31, 2011.

We hereby notify Operator that its failure to deliver these payments and reports constitutes a material breach of Section 6 of the Agreement. We also hereby exercise our right to terminate the Agreement. The Agreement therefore shall terminate in thirty days at midnight on December 30, 2011, unless all defaults (including interest, our legal fees, and other costs we have incurred to collect this debt) are fully cured within 30 days of this notice.

To be clear, if New Day does not cure its default and continues to carry KIRO-TV on December 31, 2011 or afterwards, New Day will be violating federal law. As Broadcaster has done in the past to other operators that carry its programming illegally, Broadcaster will not hesitate to aggressively protect its rights at the FCC and/or in court. If, however, Operator wishes to cure its default, please contact Therese Weiler at KIRO-TV as soon as possible. Ms. Weiler can be reached at 206-728-8779 or tweiler@kiroTV.com.

Capitalized terms used but not defined in this letter shall have the meanings given to such terms in the Agreement. This letter shall not constitute a waiver by Broadcaster of any of its rights and remedies under the Agreement, at law, in equity, or otherwise, each of which is expressly reserved. We look forward to your immediate response to this notice.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Robert J. Folliard, III', written over a horizontal line.

cc: Ms. Therese Weiler

EXHIBIT E

Retransmission Consent Election Letter

CABLE ELECTION NOTICE

CALL LETTERS	COMMUNITY OF LICENSE	DMA TO WHICH NIELSEN MEDIA RESEARCH ASSIGNED STATION IN 2009-10 NSI
KIRO-TV	SEATTLE, WA	SEATTLE-TACOMA
DTV CHANNEL (OVER THE AIR)	PRIMARY CHANNEL (VIRTUAL CHANNEL, E.G., 15.1)	LICENSEE NAME
39	7.1	KIRO-TV, INC.

This Cable Election Notice is sent this 31st day of August 2011 via Certified Mail/Return Receipt Requested (Receipt Number 7002 2410 0005 7528 2447) to the following:

Operator: New Day Broadband
 Address: 9179 West Flamingo Rd. Ste. 120
 Las Vegas, NV 89147
 Attn: Neal Schnog, Owner/General Manager

With respect to all communities within the Station's "television market" (as defined in 47 C.F.R. § 76.55(e)) served by cable systems owned or managed by your company (including those listed in our current retransmission consent agreement and including those listed EXHIBIT A hereto) between January 1, 2012, and December 31, 2014, the Licensee elects the following status for the primary video stream of the Station's digital signal (licensee to check one box below):

☒ retransmission consent.

☐ mandatory carriage ("must-carry") on the following: (check one):

- ☐ The Station's PSIP major channel number ("virtual channel").
- ☐ The cable channel on which the Station was carried on July 19, 1985.
- ☐ The cable channel on which the Station was carried on January 1, 1992.

Further, we hereby notify you of our election not to renew, extend, or roll-over the term of any of retransmission consent agreement that may be in place between our companies at this time. For further information or to request consent to the retransmission of any program stream to which a "must-carry" election does not apply, please contact:

Name: Therese Weiler
 Address: KIRO-TV
 2807 Third Avenue
 Seattle, WA 98121
 Phone: 206-728-8779
 Email: tweiler@kiroTV.com

The Licensee provides this Election Notice pursuant to 47 C.F.R. Section 76.64.

Signature: 
 Name/Title: Eric Lerner, Vice President & General Manager

CABLE ELECTION NOTICE

Exhibit A

CALL LETTERS	COMMUNITY OF LICENSE	LICENSEE
KIRO-TV	SEATTLE, WA	KIRO-TV, INC.

Communities in the Station's television market that are covered by the Cable Election Notice to which this Exhibit A is attached:

Anderson Island

Beaver

Bridgeport

Brewster

Clallam Bay

Clallam County

Forks

Herron Island

Key Peninsula

Lake Creek

Twisp

Waterville

Winthrop

CABLE ELECTION NOTICE

CALL LETTERS	COMMUNITY OF LICENSE	COUNTY OF COMMUNITY OF LICENSE		
KIRO-TV	Seattle, WA	KING		
	LICENSEE	DMA TO WHICH NIELSEN MEDIA RESEARCH HAS ASSIGNED STATION		
	KIRO-TV, Inc	Seattle-Tacoma		
ANALOG CHANNEL	DIGITAL CHANNEL (CURRENT)	POST-TRANSITION CHANNEL	PSIP CHANNEL OF PRIMARY VIDEO TRANSPORT STREAM	ESTIMATED DATE OF FINAL ANALOG BROADCAST
7	39	39	7.1	Feb. 17, 2009

This Cable Election Notice is sent this 17th day of September 2008 via Certified Mail/Return Receipt Requested (Receipt Number 7007 2560 0000 6147 8490) to the following:

Operator: Broadstripe
 Address: 604 Oakesdale Ave. SW, Suite 101
 Renton, WA 98057
 Attn: Dave Harwood, V.P. & General Manager
 CC: Rob Goolsby, Sales & Marketing Manager

With respect to cable retransmission in all communities within the Station's "television market" (as defined in 47 C.F.R. § 76.55(e)) (including those listed in EXHIBIT A hereto) between January 1, 2009, and December 31, 2011, the Licensee elects the following status for the Station's analog signal until the Station ceases analog broadcasts and, thereafter, for the primary video stream of the Station's digital signal (check one):

☒ **retransmission consent.**

☐ **mandatory carriage ("must-carry") on the following: (check one):**

- ☐ The Station's off-air broadcast channel.
- ☐ The cable channel on which the Station was carried on July 19, 1985.
- ☐ The cable channel on which the Station was carried on January 1, 1992.

For further information or to request consent to the retransmission of any program stream to which a "must-carry" election does not apply, please contact:

Name: Therese Weiler
 Address: KIRO-TV
 2807 Third Ave.
 Seattle, WA 98121
 Phone: 206-728-8779
 Email: tweiler@kiroTV.com

The Licensee provides this Election Notice pursuant to 47 C.F.R. Section 76.64.

Signature: 
 Name/Title: Eric Lerner, Vice President and General Manager

CABLE ELECTION NOTICE

Exhibit A

CALL LETTERS	COMMUNITY OF LICENSE	LICENSEE
KIRO-TV	Seattle, WA	KIRO-TV, Inc.

Communities in the Station's television market that are covered by the Cable Election Notice to which this Exhibit A is attached:

Ames Lake	Hamilton
Anderson Island	Herron Island
Beaver	Hood Canal
Bellingham	Issaquah (portions)
Bitter Lake	Kala Point
Bridgehaven	Key Peninsula
Bridgeport/Apple Valley	Lake Creek
Brewster	Lake Roesiger
Brinnon	Lake Bay
Carnation	Lewis County (portions)
Chelan	Lyman
Chelan Falls	Maltby
Clallam County (portions)	Mansfield
Clinton	Manson
Concrete/Lyman	Marblemount
Darrington	Morton
Doty	Napavine
Dryad	Packwood
Duvall	Park Highlands
East King County	Pe Ell
Easton	Port Hadlock
Echo Lake	Port Ludlow
Entiat	Port Townsend
Forks	Providence Point
Greenbank	Quilcene

CABLE ELECTION NOTICE

(Broadstripe, Exhibit A, Page 2)

Randle/Glenoma

Redmond

Sahalee

Seattle

Silver Brook

Snohomish

Snohomish County (portions)

Snoqualmie Valley

Waterville

Whatcom County (portions)

Whidbey Island

Woodinville

EXHIBIT F

February 8, 2012 Email and Letter to New Day



ERIC LEARNER
Vice President
General Manager

ADVANCE NOTICE OF POTENTIAL INFRINGEMENT

February 2, 2012

VIA EMAIL (ceo@newdaybroadband.com)

Neal Schnog
New Day Broadband
3457 Lupine Bush Court
Las Vegas, NV 89135

Re: New Day Broadband Retransmission

Dear Mr. Schnog:

Cox Media Group, LLC ("CMG") is the owner and operator of KIRO-TV, licensed to Seattle, WA (the "Station"). We believe that New Day Broadband has been retransmitting the signal of the Station after the expiration of the retransmission consent agreement and therefore without the express consent from CMG required by federal law. We therefore are forced to send New Day Broadband Cable this Advance Notice of Copyright Infringement.

Quite simply, New Day Broadband's continued retransmission of the Station's signals is illegal. By continuing to retransmit the Station without CMG's "express consent," New Day Broadband knowingly and willfully has violated the retransmission consent provisions of Section 325(b) of the Communications Act of 1934, as amended, and Section 76.64 of the FCC's rules. Furthermore, because New Day Broadband's retransmission of the signal does not comply with the FCC's rules, such carriage does not qualify for the statutory cable retransmission copyright license under 17 U.S.C. Section 111. Accordingly, New Day Broadband's carriage of CMG's Station also constitutes a willful act of copyright infringement.

We hereby notify New Day Broadband that CMG will seek all remedies available at the Federal Communications Commission and in federal court, including, without limitation, statutory damages and recovery of attorneys' fees and costs. By providing New Day Broadband with this Advance Notice of Potential Infringement, we establish, pursuant to 17 U.S.C. Section 411(b), our right as copyright owner of the Station's original programming to institute a cause of action for copyright infringement. In particular, we provide you with this notice of infringement of CMG's original programming aired, beginning on January 1, 2012, including all local news presentations.

807 Third Avenue
Seattle, WA 98121

(206) 728-8210

Advance Notice of Potential Infringement

Page 2

CMG expressly reserves all of its rights in this matter including, without limitation, its rights to seek actual and punitive damages, injunctive relief, attorneys' fees and all other available legal and equitable remedies from the courts and the FCC.

Please direct all further communications about this matter *in writing only*.

Very truly yours,

A handwritten signature in black ink, appearing to read "Eric Lerner". The signature is fluid and cursive, with the first name "Eric" and last name "Lerner" clearly distinguishable.

Eric Lerner

Vice President and General Manager
KIRO-TV

CERTIFICATE OF SERVICE

I certify that on this 12th day of March, 2012, I caused the foregoing Enforcement Complaint to be served by email and first-class mail where indicated on the following:

William T. Lake
Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Michelle Carey
Deputy Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Mary Beth Murphy
Chief, Policy Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ronald Parver
Assistant Chief, Policy Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

P. Michele Ellison
Chief, Enforcement Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Nancy Murphy
Associate Chief, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Steven A. Broeckaert
Deputy Chief, Policy Division, Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

New Day Broadband, LLC*
3457 Lupine Bush Court
Las Vegas, NV 89135
ceo@newdaybroadband.com

* also via first-class mail



Rayya Khalaf